

Deficiency Progress Report – Update 2

Report Submitted: **August 18, 2009**

CUPA: San Bernardino Fire Department, Hazardous Materials Division

Evaluation Date: December 2 and 3, 2008

Evaluation Team:

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Corrected Deficiencies: 5

Next Progress Report (Update 2) Due: August 25, 2009

Please update the deficiencies below that remain outstanding.

1. **Deficiency:** The CUPA is not conducting hazardous waste generator inspections with a frequency that is consistent with its Inspection and Enforcement (I&E) Program Plan. The CUPA has not inspected all 4,407 hazardous waste generators that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:

- 1) 4,302 hazardous waste generators were identified in fiscal year (FY) 05/06 of which 781 were inspected.
- 2) 4,389 hazardous waste generators were identified in FY 06/07 of which 708 were inspected.
- 3) 4,407 hazardous waste generators were identified in FY 07/08 of which 687 were inspected.

The CUPA has inspected approximately 49% of all known facilities generating hazardous waste over the past three fiscal years.

Improvements have been made in terms of inspecting more than a third of the Resource Conservation Recovery Act (RCRA) large quantity generators and Permit by Rule (conditionally authorized and conditionally exempt) facilities in FY 07/08, and further improvement may still be made.

Preliminary Corrective Actions: The CUPA will continue to implement its action plan as noted in its FY 07/08 Self-Audit report. By April 30, 2009, the CUPA will

submit a progress report, including the number of facilities inspected within the current fiscal year.

CUPA's 1st Update (4-1-09): Please refer to the CUPA's progress report form attached to this document.

Cal/EPA's 1st Response: Please refer to DTSC's response.

- **DTSC's response:** Please continue to keep DTSC informed as to your progress in inspecting the number of facilities within your jurisdiction during your next quarterly report.

CUPA's 2nd Update: See Table 1. Currently there are 4372 active generator facilities, 47 permitted RCRA Large Quantity Generators, and 79 Tiered Permitting Facilities. The CUPA did routine inspections at 717 generator facilities, an increase of 37 % over the 523 routine generator inspections in the previous 6 months and a number larger than the previous fiscal year. This is very close to the 3 year target based on the snapshot. With respect to RCRA LQGs actually under permit as RCRA LQGs, the CUPA inspected 16 which would be above the frequency based on the snapshot. Combined Tiered Permitting facilities are within frequency, since the CUPA intentionally trades off the years that PBR-HHWs are done with the years that other onsite HW Treatment facilities are done. 31% of the TP units are due in FY 2009-10, 49% are due in 2010-11, and 20% are due in 2011-12.

2. **Deficiency:** The CUPA has not met the state mandated inspection frequency for its hazardous materials business plan facilities. This deficiency was identified in the CUPA's 2005 evaluation. In addition, based on the Annual Inspection Summary Reports, the CUPA inspected approximately 21% of its hazardous materials business plan facilities in FY 05/06 and 18% in both FY 06/07 and FY 07/08.

Preliminary Corrective Actions: The CUPA will continue to implement its action plan as noted in its FY 07/08 Self-Audit report. By April 30, 2009, the CUPA will submit a progress report, including the number of facilities inspected within the current fiscal year.

CUPA's 1st Update (4-1-09): Please refer to the CUPA's progress report form attached to this document.

Cal/EPA's 1st Response: Please refer to CalEMA's response.

- **CalEMA's response:** The actions taken by the CUPA appears to be a successful measure in correcting this deficiency. The numbers provided by the CUPA shows that the CUPA is on pace to accomplish 27% of

inspections for the fiscal year and with the new hires, as well as future hires, the goal of meeting the State mandated inspection frequencies for the HMBP program appear to be attainable. However the numbers provided for the CalARP program seem to be falling short of the state mandated inspection frequency of 33%. In the CUPA's next progress report, please report any new numbers to show the progress towards correcting this deficiency. Keep up the good work!

CUPA's 2nd Update: See Table 1. Currently there are 6590 active handlers. The CUPA did routine inspections at 1155 of these facilities, an increase of 35% over the 855 routine handler inspections in the previous 6 months. If the CUPA can maintain this inspection rate, we can meet the expected 3 year frequency. Note that the number of facilities is expected to increase substantially as the CUPA is now systematically permitting CO2 handling at restaurants, something that previously was a low priority. This will increase the number of handlers, but many of these will not be due for inspection for until FY 2012/13. However, the CUPA would also like to explore some kind of self-certification alternative only inspecting a sample of these facilities for these limited risk situations.

3. **Deficiency:** The CUPA is not ensuring that some hazardous materials business plans being submitted contain either an annual certification or new submittal of their annual inventory. Of the 17 facility files reviewed, five were found without an annual inventory or certification of no change.

Preliminary Corrective Actions: By April 30, 2009, the CUPA will develop and implement an action plan to maintain current annual inventory certifications of all businesses within the business plan program. By April 30, 2009, the CUPA will submit the action plan and report the CUPA's progress in implementing the action plan.

CUPA's 1st Update (4-1-09): Please refer to the CUPA's progress report form attached to this document.

Cal/EPA's 1st Response: Please refer to CalEMA's response.

- **CalEMA's response:** The actions taken by the CUPA appears to be a successful measure in correcting this deficiency. In the CUPA's next progress report, please report the effectiveness of the reminder notice and any numbers the CUPA may have obtained from this action to show the CUPA's progress towards correcting this deficiency. Keep up the good work!

CUPA's 2nd Update: The San Bernardino CUPA received 20% more business plan submissions 2008-09 than in 2007-08. The transition from manual filing to electronic filing via CERS is expected to expand the number of facilities that can

be reached by email notifications and to also simplify the recertification process for those with established plans.

4. **Deficiency:** The CUPA has not maintained the state mandated inspection frequency for its California Accidental Release Prevention (CalARP) facilities. However, the CUPA is on its way toward correcting this deficiency. At least five of 150 CalARP facilities have not been inspected within the last three fiscal years.

Preliminary Corrective Actions: By April 30, 2009, the CUPA will submit a progress report, including the number of CalARP facilities that have been inspected during the current fiscal year.

CUPA's 1st Update (4-1-09): Please refer to the CUPA's progress report form attached to this document.

Cal/EPA's 1st Response: Please refer to CalEMA's response in #2.

CUPA's 2nd Update: See Table 1. Currently there are 134 active CalARP facilities. The CUPA did routine inspections at 67 of these facilities in the past 6 months, an increase of 10 fold over the previous 6 months and more inspections than in the previous fiscal year. With CalARP facilities, annual numbers can be misleading as a single complex facility can easily require the resources of 10 municipal water wells. So, looking back over the past 2 fiscal years, of the 134 facilities, 49 were inspected in 07/08 (and therefore will become due in 10/11), 68 were inspected in 08/09 (and therefore become due in 11/12) leaving 17 that need to be inspected in 09/10. The inspectors are being provided with priority lists for inspection based on risk.

New CalARP facilities enter the inspection cycle based on the program level of their RMPs since RMP verification is accomplished at the time of inspection. Program level 3 facilities are targeted within 2 years and Program level 2 facilities within 3 years, to meet RMP verification requirements.

Many municipal water facilities continue to replace gas chlorine with other alternative disinfectants so the CUPA anticipates a reduction in the number of facilities regulated under CalARP.

5. **Deficiency:** The CUPA's permit does not include some required underground storage tank (UST)-specific elements. It is missing monitoring requirements of both tanks and piping or an attached approved monitoring plan.

Preliminary Corrective Actions: By April 30, 2009, the CUPA will issue permits with monitoring requirements or attach an approved Monitoring Plan. The monitoring requirements may be shown as: "Monitoring or programming for monitoring will be conducted at the locations of the following equipment, if

installed: monitoring system control panels; sensors monitoring tank annular spaces, sumps, dispenser pans, spill containers, or other secondary containment areas (e.g. double-walled piping); mechanical or electronic line leak detectors; and in-tank liquid level probes (if used for leak detection).”

CUPA’s 1st Update (4-1-09): Please refer to the CUPA’s progress report form attached to this document.

Cal/EPA’s 1st Response: Cal/EPA and the SWRCB consider this deficiency corrected. Please refer to the SWRCB’s response.

- **SWRCB’s response:** SWRCB considers Deficiency #5 corrected and looks forward to seeing the final permit template.

See Attachment 1 for the permit conditions for the reverse of the permit, anticipated to be adopted with the next order of invoice paper.

- 6. Deficiency:** The CUPA has not met the mandated inspection frequency for UST facility compliance inspections. This deficiency was also identified during the CUPA’s last evaluation in 2005 and plans were made to improve the number of inspections. Inspection frequencies for the last three fiscal years were 73% (05/06), 70% (06/07), and 62% (07/08). The CUPA’s goal is to meet the inspection frequencies and conduct the compliance inspection during the annual monitoring certification. The CUPA’s challenges have been due to losing staff positions and reassignment of some staff time to other departmental duties. The CUPA stated that they are using a risk-based evaluation process to first inspect the facilities with the highest potential for environmental impacts or are recalcitrant in returning to compliance after issuance of a Notice of Violation. This provides maximum protection for the environment yet may reduce compliance frequencies.

Preliminary Corrective Actions: The CUPA will conduct compliance inspections for all UST facilities each year, which will be reflected on their Annual Summary Report 3 and Semi-Annual Report 6.

The CUPA already has a plan to add additional resources to assist in meeting its scheduled inspection frequencies.

The CUPA has been seeking approval for additional staff or to fill vacant positions. This deficiency will be considered corrected when approval is granted.

The SWRCB recommends that this approval be obtained as soon as possible. Please report the status in the first deficiency progress report.

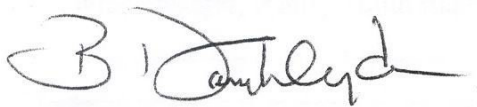
CUPA’s 1st Update (4-1-09): Please refer to the CUPA’s progress report form attached to this document.

Cal/EPA's 1st Response: Please refer to the SWRCB's response.

- **SWRCB's response:** SWRCB appreciates the CUPAs efforts to increase the inspections frequencies for UST facilities which were identified in Deficiency #6 as not meeting the required annual inspection frequency. The CUPA has reached about 76% of UST facilities inspected annually. The CUPA will continue to update their inspection activities in the next progress report.

CUPA's 2nd Update: See Table 1: Currently there are 846 active UST facilities with active UST permits. The CUPA did routine inspections at 362 of these facilities, an increase of 18 % over the 313 routine UST inspections in the previous 6 months. The San Bernardino CUPA has increased the number of routine inspections from the previous 6 months but still falls short of annual frequency. The number of inspections required due to EVR upgrades and the additional plan check time has reduced the availability of the limited staff. Also, 1 member of UST staff has been unavailable for inspections since October 2008 and off entirely on medical leave since March 2009. 3 "hybrids" (district inspectors part-time assigned to UST inspections also) have contributed to getting these inspections completed. We now are identifying 2-4 additional district inspectors who may be appropriate to assignment as "hybrids". The CUPA did hire 3 new inspectors in 08-09, one that was already ICC-certified. For 09-10, due to County-wide hiring restrictions, the CUPA is limited in the ability to add to the inspection staff. However, the CUPA continues to close and transfer LOP cases with the intention of reassigning the majority of those positions to UST with just a minimal LIA program. San Bernardino County is planning to exit the LOP program at the end of the 2010-11 fiscal year.

If you have any questions, please contact me or Marilyn Kraft or Susan Williams at (909) 386-8401.



**B. DOUGLAS SNYDER, ASSISTANT FIRE MARSHAL
SAN BERNARDINO COUNTY FIRE DEPARTMENT
HAZARDOUS MATERIALS DIVISION**

BDS:mk

cc: Peter Brierty, Assistant Fire Chief
Pat Dennan, Fire Chief

Attachment 1: Permit Conditions Language

PERMIT CONDITIONS

As a condition of the permit to operate, the owner, operator, and permit holder shall comply with the following:

a. Hazardous Materials Release Response Plans and Inventories Program (HMRRP):

California Health and Safety Code (CHSC) Division 20, Chapter 6.95, Article 1 and Title 19 California Code of Regulations (CCR).

b. California Accidental Release Prevention Program (CalARP): CHSC Division 20, Chapter 6.95, Article 2 and Title 19 CCR.

c. Underground Storage Tanks (USTs): CHSC Division 20, Chapters 6.5, 6.7, 6.75, and Title 23 CCR, Chapters 16 & 18.

- (1) Monitoring, Response and Plot Plans shall be approved by the San Bernardino County CUPA.
- (2) The owner and operator are subject to all applicable requirements of Chapter 6.7 and 6.75 of the CHSC and the applicable regulations.
- (3) This permit and permit conditions including the Monitoring, Response and Plot Plans shall be maintained on site.
- (4) Monitoring or programming for monitoring shall be conducted at the locations of the following UST equipment, if installed: monitoring system control panels; sensors monitoring tank annular spaces, sumps, dispenser pans, spill containers, or other secondary containment areas (e.g. double-walled piping); mechanical or electronic line leak detectors; and in-tank liquid level probes used for leak detection.

Note: The UST ID Number is listed on the front of the permit for each UST.

d. Aboveground Petroleum Storage Act SPCC Plans: CHSC Division 20, Chapter 6.67 and 40 CFR 112

e. Hazardous Waste Generator and Hazardous Waste Onsite Treatment: CHSC Division 20, Chapter 6.5 and Title 22 CCR, Division 4.5, Chapters 10, 11, 12, 20 and 31.

f. Uniform Fire Code, Hazardous Materials Management Plans and Inventories: CHSC Division 12, Part 2, Chapter 1, Article 2, Section 13143.9, CHSC 25509.2, California Fire Code Chapter 27, Section 2701.5.1 and Section 2701.5.2, formerly referred to as UFC Section 80.103.

g. Unified Program Forms and Electronic Reporting: CHSC Division 20, Chapter 6.11, Section 25404(e)(4) and Title 27 CCR.

Table 1: Inspection Data

The following table summarizes the number of regulated businesses and inspections for the latest available period (1/1/2009 – 6/30/2009) compared to the previous period (7/1/2008 through 12/31/2008). Note that regulated during the year does not represent the number of businesses regulated at any one time. Per previous CalEPA instruction, it includes any business regulated during the period, even if it didn't exist at the beginning of the period or is inactive at the end of the period. The snapshot (used by some CUPAs on annual reports because it is simpler to calculate) represents the number of regulated facilities actively regulated for that CUPA element as of that date.

| | | | Routine Inspections | | Percent increase from previous 6 months | Projected Frequency based on last 6 months compared to current snapshot | Other Inspections | |
|-----------------------------------|---|---------------------|---------------------|------------------|---|---|-------------------|------------------|
| Program | Regulated during the year as of 6/30/09 | Snapshot on 8/14/09 | 7/1/08-12/31/08 | 1/1/09 – 6/30/09 | | Years | 7/1/08 - 12/31/08 | 1/1/09 – 6/30/09 |
| HMRRP | 6575 | 6590 | 854 | 1155 | 35% | 2.85 | 184 | 226 |
| CalARP | 158 | 134 | 6 | 67 | 1017% | 1.00 | 7 | 4 |
| UST Facilities | 846 | 846 | 313 | 362 | 16% | 1.17 | 310 | 329 |
| HW Generators | 4464 | 4372 | 523 | 717 | 37% | 3.05 | 184 | 174 |
| RCRA LQGs | 52 | 47 | 2 | 16 | 700% | 1.47 | 2 | 0 |
| Onsite HW Treatment | 63 | 45 | 3 | 5 | 67% | 4.50 | 0 | 1 |
| PBR - HHW | 16 | 16 | 1 | 12 | 1100% | 0.67 | 0 | 1 |
| <i>Combined Tiered Permitting</i> | <i>79</i> | <i>61</i> | <i>4</i> | <i>17</i> | <i>325%</i> | <i>1.79</i> | <i>0</i> | <i>2</i> |

Note: The San Bernardino County CUPA inspection frequency by mandates and application is once every 1 year for USTs and once every 3 years for all other categories. This will not mean that 33% of each type of facility in the 3 year category will be inspected each year. The date of inspection drives when the next inspection is due. And the categories cycle and the CUPA intentionally trades off the years that PBR-HHWs are done with the years that other onsite HW Treatment facilities are done. Also number of facilities inspected does not necessarily translate into proportion of inspection work. A large complex CalARP facility may easily take longer to inspect than 10 municipal water wells. The CUPA is addressing this issue with target inspection lists for high priority facilities. The CUPA believes that it is meeting targeted frequencies for CalARP, Tiered Permitting, and RCRA LQGs.